IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 676 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAMBHU DAYAL AGRAWAL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 676 of 2001

MR RC JANI for Petitioner No. 1-5

Mr. M.A. Bukhari, A.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 15/01/2003

ORAL JUDGEMENT

1. This petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short "the Code") for quashing the First Information Report being Crime

Register No.22 of 2001 recorded before Unjha Police Station, Unjha of Mehsana District for the offence punishable u/ss 406-420-272-273-326-28-511-120Bof the I.P. Code as well as u/s 16 of the Prevention of Food Adulteration Act, 1954.

2. The aforesaid F.I.R. has been lodged by the Police Sub-Inspector of Unjha Police Station stating that when he was on duty on midnight petrol duty on 21-1-2001, at that time he received an information that certain ediable goods were being carried in a truck near Tirupati Complex and an inquiry was made from the driver of the said vehicle. However, neither the driver nor the owner of the transport company could render any satisfactory explanation and ultimately samples were collected in presence of the Food Inspector. It was found that the said ediable goods was adulterated and therefore the F.I.R. was filed by the said Police Sub-Inspector on the next day i.e. 22-1-2001 for the aforesaid offences against the petitioners.

3. Feeling aggrieved by the aforesaid F.I.R. the petitioners have filed this petition u/s 482 of the Code for quashing and setting aside the same. It has been mainly contended that the Police Sub-Inspector has no authority to file F.I.R. before the Police for the offences in question. In fact, even looking to the averments made in the F.I.R. no offence can be said to have been made out and therefore it would be an abuse of court process to permit further investigation and submission of the charge-sheet at the end of the investigation by the Investigating Officer in the said matter. Therefore, no offence has been made even prima facie, therefore the F.I.R. may be quashed.

4. On receipt of the above petition, notice was issued and rule was issued thereafter.

5. Learned A.P.P. has appeared on behalf of the State. I have heard the learned advocate for the petition and the learned A.P.P. for the State who have taken me through the F.I.R. and legal aspects of the case.

6. It has been mainly contended by the learned advocate for the petitioner that the Police Sub-Inspector has no authority or power to file the F.I.R. or complaint in respect of the offences punishable under the provisions of The Prevention of Food Adulteration Act, 1954 (for short "the said Act"). He has, drawn my attention to the provisions made in the said Act. If we

go by the scheme of the said Act, it is very clear that the powers have been given to the Food Inspector for collecting the samples and for sending them to the Public Analyst and also to file complaint against the persons who are found to be guilty of the offences punishable under the said Act. In the present case, a Food Inspector appointed u/s 9 of the Act, has not filed the complaint but a F.I.R. has been filed by the Police Sub-Inspector. The Police Sub-Inspector cannot be equated with Food Inspector and therefore the Police Sub-Inspector cannot claim any right, power or authority to file the F.I.R. for the offences punishable under the said Act.

7. It is required to be considered that the under Section 12 of the said Act, even the purchaser has also been empowered to take samples and send the same to the Public Analyst for analysis. In the present case, we find that the Police Sub-Inspector has not purchased the food samples in question and therefore he is not a purchaser. Therefore, he cannot file the complaint or the F.I.R. even in his capacity as purchaser.

8. Then the learned advocate for the petitioners has also taken me through the provisions of the Prevention of Food Adulteration Rules,1955 (hereinafter referred to as "the said Rules"). Rule 9 of the said Rules, provides for the duties of the Food Inspector and there are also provisions as to the manner in which food samples are required to be collected. In the present case, we find that the F.I.R. etc. do not speak that the procedure and rules have been observed and followed by the P.S.I. while taking the samples.

9. Rule 12 of the said Rules also states that when the Food Inspector takes a sample of an article for the purpose of analysis, he has to give notice of his intention to do so in writing in form VI, then and there, to the person from whom he takes the sample and simultaneously, by appropriate means, also to the persons if any, whose name, address and other particulars have been disclosed under Section 14-A of the Act. The F.I.R. does not state that this process was undertaken by the Police Sub-Inspector while taking the samples.

10. Then Rule 14 of the said Rules provide for manner for sending samples for analysis. The F.I.R. etc. do not show that this Rule was followed by the Police Sub-Inspector while forwarding the samples to the Public Analyst.

11. Rule 16 of the said Rules, provides for packing and sealing the samples. The F.I.R. does not show that this Rule was followed while packing and sealing the samples in question.

12. Rule 17 of the said Rules, provides for manner of despatching the containers of samples. Again the F.I.R. is silent on the point as to whether this procedure was followed by the Police Sub-Inspector while despatching the samples in question.

13. Rule 18 of the said Rules says that a copy of memorandum and specimen impression of the seal used to seal the packet, shall be sent, in a sealed packet separately to the Public Analyst by any means immediately but not later than the succeeding working day. Again the F.I.R. does not show that the Police Sub-Inspector has followed this provision made under Rule 18 of the Rules while while sending the samples to the Public Analyst.

14. Rule 19 further says that the preservatives are required to be added in the food samples. Again the F.I.R. does not show that any preservative was added to the food samples.

15. Section 10 (3) of the said Act provides that the complainant is required to pay for the samples purchased by him. In the present case, we find that in the F.I.R. it is not stated that the price of the goods in respect of which the samples were collected was paid to the vendor.

16. Section 11 of the said Act also provides that after taking the samples, the same is required to be divided into three parts, and one of the same is required to be sent to the Public Analyst and two other parts are required to be sent to the Local (Health) Authority for the purpose of sub-section (2) of this Section and sub-sections (2-A) and (2-E) of Section 13.

17. Section 13 of the said Act, says that even the accused person has a right to obtain second opinion from the Central Food Laboraatory and the report of the said Central Food Laboratory would be a separate report from the report of the Public Analyst. There is nothing in the F.I.R. to show that some portion of the samples in question was preserved so that the present petitioners could request the concerned Court for sending the samples to the Central Food Laboratory. It is well settled that these provisions are mandatory and are required to be strictly complied with. If the petitioners are unable to

exercise their right of applying before the learned Magistrate for having second opinion from the Central Food Laboratory, then a very valuable right of the petitioners can be said to have been infringed and therefore his defence is likely to be adversely and prejudicially affected.

18. It is very clear that in the present case no procedure as laid down in the said Act and Rules has been followed by the Police Sub-Inspector. Learned A.P.P. is unable to say that the procedure as indicated in the said Act and Rules has been followed. In that view of the matter, the samples have been taken by the Police Sub-Inspector without following procedure as laid down in the said Act and Rules.

19. On one hand, the Police Sub-Inspector is not competent to file complaint for the offences punishable under the said Act and on the other hand he is not the purchaser as indicated above. Even he has not followed the procedure required to be followed for taking the samples for preserving the samples and for despatching the samples to the Public Analyst. A valuable right of the petitioners of having second opinion has been lost as there is nothing on record to show that the said samples have been preserved as aforesaid. In view of the violation of the aforesaid mandatory provisions, it is clear that no fruitful purpose will be served by allowing the prosecution to go ahead with investigation and trial.

20. It is well settled that the petitioners have right of getting second opinion from the Central Food Laboratory. Their defence can be said to have been adversely affected and in that case also the complaint is required to be quashed and set aside.

21. In that case this is a fit case for exercising discretionary jurisdiction and power under Section 482 of the Code for quashing and setting aside the F.I.R. Learned A.P.P. appearing on behalf of the State is unable to support the case of the State or of the Police Sub-Inspector.

22. For the foregoing reasons, this petition is allowed. The First Information Report being CR No. 22 of 2001 filed by the Police Sub-Inspector before the Unjha Police Station and consequent investigation in respect thereof are ordered to be quashed and set aside. The petitioners shall not be prosecuted in respect of the said offences on the basis of the F.I.R. filed by the Police Sub-Inspector. This does not mean that even the

Food Inspector is debarred from prosecuting the petitioners. Rule is made absolute to the above extent.

(D.P. Buch, J.)

/JVSatwara/

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CRIMINAL MISC.APPLICATION No 676 of 2001

SHAMBHU DAYAL AGRAWAL
Versus
STATE OF GUJARAT

---1.

MR RC JANI for Petitioner No. 1-5
MR. MA. Bukhari, Adl. PUBLIC PROSECUTOR
for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 06/01/2003

For the reasons recorded in the judgment and order, this petition is allowed. The First Information Report being CR No. 22 of 2001 filed by the Police Sub-Inspector before the Unjha Police Station and consequent investigation in respect thereof are ordered to be quashed and set aside. The petitioners shall not be prosecuted in respect of the said offences on the basis of the F.I.R. filed by the Police Sub-Inspector. This does not mean that even the Food Inspector is debarred from prosecuting the petitioners. Rule is made absolute to the above extent.

(JVSatwara)